

OFFICIAL FILE  
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

ORIGINAL

TRI-COUNTY ELECTRIC  
COOPERATIVE, INC.,

Complainant,

vs.

ILLINOIS POWER COMPANY, d/b/a  
AMEREN IP,

Respondent.

CASE NO. 05-0767

**REPLY OF TRI-COUNTY ELECTRIC COOPERATIVE, INC.**  
**TO ILLINOIS POWER COMPANY dba AMERENIP'S**  
**MOTION TO STRIKE AFFIDAVIT OF ROBERT C. DEW, JR.**

Tri-County Electric Cooperative, Inc., (Tri-County) by its Attorneys GROSBECK,  
BECKER, TICE, TIPPEY & BARR, in response to the Motion to Strike the Affidavit of Robert  
C. Dew, Jr. filed by Illinois Power Company dba AmerenIP (IP) states as follows:

1. IP has moved to strike the next to the last paragraph on page 16 of the Engineering Report prepared by Robert C. Dew, Jr., P.E. on the basis that he concludes IP is violating "...the spirit and Letter of the Agreement." by serving the Citation Oil gas plant and gas compressor sites in Tri-County designated territory under the Agreement. This statement appears in the CONCLUSIONS of Mr. Dew's Engineering Report which was provided to IP in response to discovery and which is attached to the Affidavit of Robert C. Dew, Jr. which in turn has been filed in support of Tri-County's Motion for Summary Judgment. The only statement of Mr. Dew in his Engineering Report identified by IP as being inadmissible is the foregoing conclusion noted at page 16 of the Report. Robert C. Dew, Jr. as Tri-County's Consulting Engineer has a right to provide his engineering opinion as to the engineering meaning of various provisions of the Service Area Agreement in as much as the contents of the Agreement contain many

references to the engineering aspects of providing electric service by the parties to the Agreement (Dew Dep. Trans. pages 7-8).

The Engineering Report contains many factual statements, none of which have been identified by IP as being inadmissible. Accordingly, since IP has failed to identify any other statements of Tri-County's Engineer Robert C. Dew, Jr. in his Engineering Report, all such other statements are admissible.

2. IP has objected to the statement by Engineer Robert C. Dew, Jr. that he "...reviewed numerous documents, drawings, work orders, and diagrams of the Texas Substation which together with Affiant's personal inspection has enabled Affiant to develop a chronology of the modifications, additions, and/or changes to the Texas Substation from the date of the first documents dating from 1952 to the current time." The basis for IP's objection is that Robert C. Dew, Jr. failed to attach sworn or certified copies of the documents referred to in his Affidavit. However, that objection is without merit in as much as the documents are limited to those documents provided by IP in response to Tri-County's discovery request and the original of those documents are in the control and possession of IP. The purpose for attaching such documents to the Affidavit is to give notice to IP of the documents in their control upon which the statements of Robert C. Dew Jr. are based. Those documents in fact are identified and described in the Engineering Report of Robert C. Dew, Jr. at pages 4-12 of the Engineering Report. IP has in its possession the original of the documents inspected, reviewed and relied upon by Robert C. Dew, Jr. in his Affidavit and Engineering Report. Accordingly, Tri-County has met its obligation to furnish the necessary documents to IP relied upon and referenced in paragraph 5 of the Affidavit of Robert C. Dew, Jr. Otis Elevator v American Surety Co. 314 Ill. App. 479, 483-484 (1942).

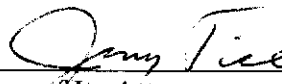
3. IP moves to strike the opinions and conclusions of Tri-County's Engineer Robert C. Dew, Jr. as found in paragraph 7 of his Affidavit without identifying the particular conclusions and/or opinions which are sought to be stricken. IP's basis for such objection is that such opinions and conclusions cannot be offered in the form of an affidavit in support of a motion for summary judgment, but can be offered as evidence at a trial of this proceeding. This objection is without any merit in as much as affidavits in support of or in opposition to a motion for summary judgment made by experts rendering their opinions are admissible by way of affidavits or reports in support or in opposition to a motion for summary judgment. Accordingly, the opinions of Tri-County's engineer Robert C. Dew, Jr. as found in paragraph 7 regarding the meaning of "point of delivery" as used in the Service Area Agreement between Tri-County and IP and as found in paragraph 7 of his Affidavit are admissible by way of affidavit either in support of or in opposition to the motions for summary judgment.

WHEREFORE, Illinois Power Company dba AmerenIP's Motion to Strike the Affidavit of Robert C. Dew, Jr., should be denied.

Respectfully submitted,

TRI-COUNTY ELECTRIC COOPERATIVE, INC.

By GROSBOLL BECKER TICE TIPPEY & BARR

By   
One of Its Attorneys

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**PROOF OF SERVICE**

I, JERRY TICE, hereby certify that on the 11<sup>th</sup> day of July, 2008, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the attached Reply by Tri-County Electric Cooperative, Inc. to the Response by Illinois Power Company dba AmerenIP to Tri-County's Motion for Summary Judgment, addressed to the following persons at the addresses set opposite their names:

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